



(11)

NOV 1 1943

CHARLES ELMORE ORFFLEY

IN THE
Supreme Court of the United States
OCTOBER TERM, 1943

No. 96

V. W. PETTY *Petitioner*

v.

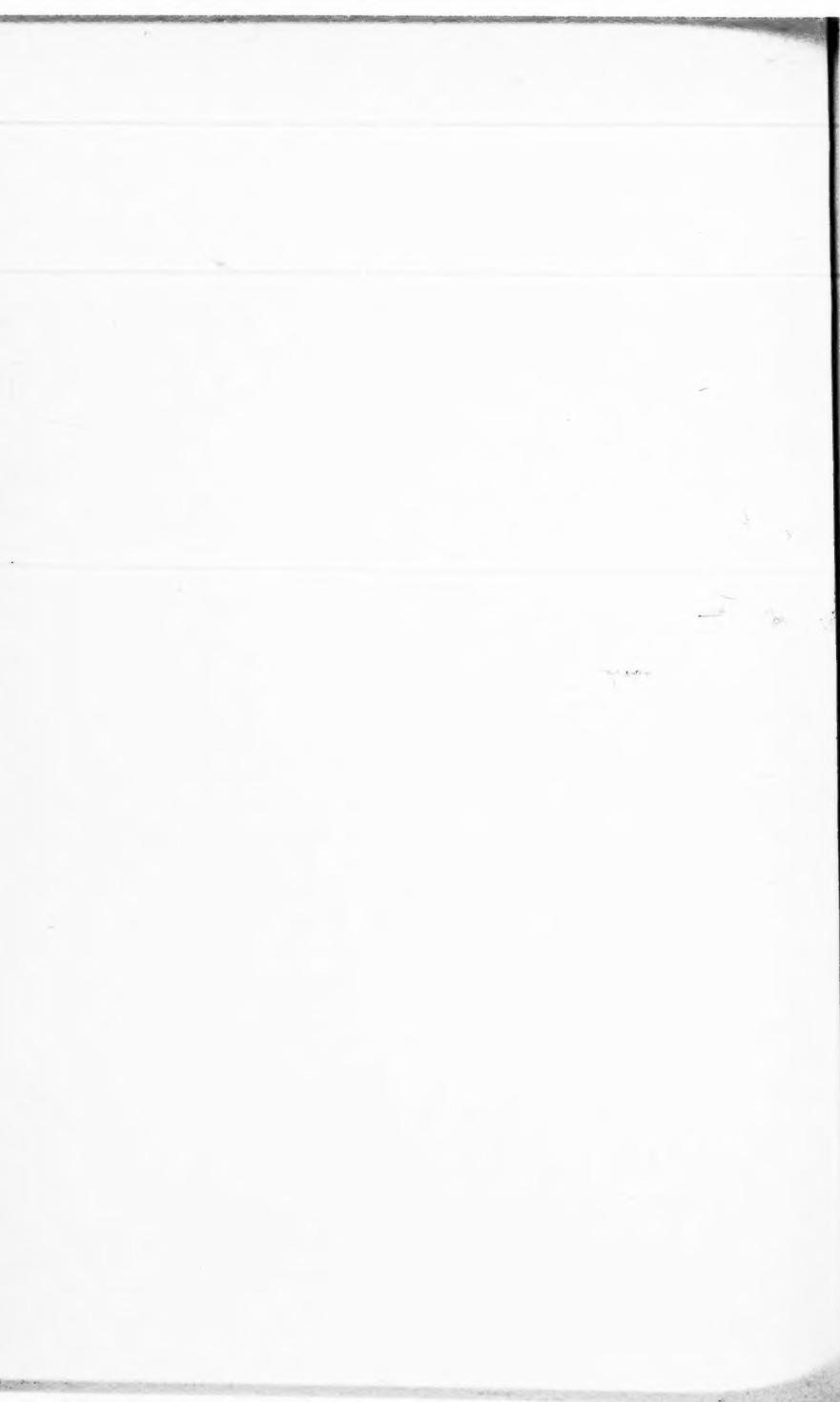
MISSOURI AND ARKANSAS RAILWAY COMPANY *Respondent*

PETITION FOR REHEARING

W. R. DONHAM

SAM M. WASSELL

Counsel for Petitioner



INDEX

	Page
Petition for Rehearing	1
Brief	3

TABLE OF AUTHORITIES

Baltimore & Ohio R. Co. v. Kepner, 314 U.S. 44	5
Bernards v. Johnson, 314 U.S. 20	5
Illinois Cent. R. Co. v. Moore, 112 F. (2d) 959	3
Louisville & N. R. Co. v. Bryant, 263 Ky. 578, 92 S.W. (2d) 749	4
McGlohn v. Gulf & S. I. R. R., 179 Miss. 396, 174 So. 250	3
Petty v. Missouri & Arkansas R. Co., 167 S.W. (2d) 895	4
Railway Labor Act, 45 U.S.C.A. § 151 et seq.	3
Rentschler v. Missouri Pac. R. Co., 126 Neb. 493, 253 N.W. 694, 95 A.L.R. 1	3
"Tap Line Cases", 234 U.S. 1, 29, 240 U.S. 294, 257 U.S. 114	4
Textile Mills, etc. v. Commissioner, 314 U.S. 327	5
Yazoo & M. V. R. Co. v. Webb, 64 F. (2d) 902	3



IN THE
Supreme Court of the United States

OCTOBER TERM, 1943

No. 96

V. W. PETTY *Petitioner*

v.

MISSOURI AND ARKANSAS RAILWAY COMPANY *Respondent*

PETITION FOR REHEARING

Petitioner, V. W. Petty, respectfully prays that a rehearing be granted herein and for grounds thereof, states:

1. That the issue herein involves a Federal question of substance; namely, whether employment contracts made pursuant to the provisions of the Railway Labor Act, an Act of Congress, with reference to stipulations against discharge without a hearing, are unilateral and unenforceable.

2. That there is a conflict in the decisions of the various courts of last resort of the several states on this

question, and that the precise question has never been decided by the Supreme Court of the United States for the guidance of inferior or subordinate courts.

3. That the issue involved is one of public importance.

WHEREFORE, petitioner prays that the Order heretofore made on October 11, 1943, denying certiorari to the Supreme Court of Arkansas, be set aside and that a rehearing be granted.

Respectfully submitted,

W. R. DONHAM
Rector Building
Little Rock, Arkansas

SAM M. WASSELL
Pyramid Building
Little Rock, Arkansas

Counsel for Petitioner

We, W. R. Donham and Sam M. Wassell, do certify that we are counsel for V. W. Petty, petitioner herein; that we have prepared the above and foregoing Petition for Rehearing; that said Petition is presented in good faith and not for delay, and that we believe the grounds thereof to be well taken.

Dated this _____ day of October, 1943.

W. R. DONHAM

SAM M. WASSELL
Counsel for Petitioner

BRIEF ON REHEARING

1.

The question presented in this case is whether or not contracts made between railroad companies and their employees, since the enactment by Congress of the Railway Labor Act (45 U.S.C.A. § 151 *et seq.*) are enforceable with respect to stipulations against wrongful discharge, or discharge without a hearing. Involving, as it does, an Act of Congress and the rights accorded to railroad employees thereunder, it is necessarily a Federal question of substance.

2.

Railroad employment agreements such as the one involved in this case have been before the various state courts of last resort a number of times since the enactment of the Railway Labor Act, and also before the United States Circuit Court of Appeals for the Fifth Circuit. The Circuit Court of Appeals has held such stipulations against wrongful discharge, or without a hearing to be enforceable.

Yazoo & M. V. R. Co. v. Webb, 64 F. (2d) 902;

Illinois Cent. R. Co. v. Moore, 112 F. (2d) 959.

And the state courts of last resort in Mississippi and Nebraska have held the same.

McGlohn v. Gulf & S. I. R. R., 179 Miss. 396, 174 So. 250;

Rentschler v. Missouri Pac. R. Co., 126 Neb. 493, 253 N.W. 694, 95 A.L.R. 1.

State courts holding to the contrary include those of Arkansas and Kentucky.

Petty v. Missouri & Arkansas R. Co., 167 S.W. (2d) 895;

Louisville & N. R. Co. v. Bryant, 263 Ky. 578, 92 S.W. (2d) 749.

The Supreme Court of the United States has never passed precisely upon the question at issue herein, and the state courts of last resort are, as remarked in the opinion in the *Rentschler* case, *supra*, "in hopeless conflict".

3.

The issue involved is of public importance. It relates directly to the working conditions of railroad employees throughout the nation and therefore affects commerce. It may safely be said that every railroad in the nation today operating as a common carrier is engaged in the carriage of goods in interstate commerce; each road, no matter how small, forming a connecting link in the vast and intricate network of transportation systems reaching from one end of the country to the other. This Court, in the "Tap Line Cases" 234 U.S. 1, 29, 240 U.S. 294, 257 U.S. 114, held that short tap lines connecting with trunk line carriers were subject to regulation by the Interstate Commerce Commission, as being engaged in the transportation of goods in interstate commerce.

Since the Railway Labor Act was intended to foster the peaceable settlement of labor disputes between carriers and their employees, and thereby minimize interruption in the flow of commerce, it follows that the question of the validity of an employment agreement made pursu-

ant to the Act is one of public importance and of which this Court should take jurisdiction and decide for the future guidance of the state and federal courts alike.

“As the issue was deemed a federal question of substance undecided by this Court and in which there was a lack of uniformity in the state court decisions, certiorari was granted.”

Baltimore & Ohio R. Co. v. Kepner, 314 U.S. 44.

“We took this case because it presents important questions of appellate practice . . . ”

Bernards v. Johnson, 314 U.S. 20.

“We granted the petition for certiorari because of the public importance of the first problem and the contrariety of the views of the court below and the judges of the Circuit Court of Appeals of the Ninth Circuit as respects its solution.”

Textile Mills, etc., v. Commissioner of Internal Revenue, 314 U.S. 327.

It is respectfully submitted that a rehearing should be granted, that the order of October 11, 1943, denying certiorari, should be set aside, and that a writ of certiorari should issue.

Respectfully submitted,

W. R. DONHAM

Rector Building

Little Rock, Arkansas

SAM M. WASSELL

Pyramid Building

Little Rock, Arkansas

Counsel for Petitioner